

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/021,617 02/10/98 SCHRAMM

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QMS1/0701

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EXAMINER

DOUGLAS, S

ART UNIT

PAPER NUMBER

3751

DATE MAILED:

07/01/98

Please find below and/or attached an Office communication concerning this application or proceeding.**Commissioner of Patents and Trademarks**

Office Action Summary	Application No. 09/021,617	Applicant(s) Schramm
	Examiner Steven O. Douglas	Group Art Unit 3751

Responsive to communication(s) filed on Feb 10, 1998.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-20 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, it is indefinite as to the structural relationship between the “automated bubble producing device” (line 1 and 2) and the “liquid emitting device” (line 2). In regard to claim 3, it is indefinite as to what is defined by a “continuous water source” (line 1). In regard to claim 4, it is indefinite as to how the “liquid emitting device defines a hydraulic motor” (line 1). In regard to claim 5, it is indefinite as to the connection defined by “actuatingly connected” (line 1 and 2). In regard to claim 8, it is indefinite as to what is intended by “non liquid submerged bubble creation apparatus” (line 1). In regard to claim 10, it is indefinite as to what is defined by a “continuous water source” (line 1 and 2). In regard to claim 14, it is indefinite as to what is intended by “non liquid submerged bubble creation apparatus” (line 1). In regard to claim 14, it is indefinite as to what is defined by a “continuous water source” (line 2). In regard to claim 20, it is indefinite as to what is intended by “non liquid submerged bubble creation apparatus” (line 1).

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The above noted informalities are merely exemplary and not to be taken as an exhaustive list of all such instances. Therefore, Applicant should review the claims in their entirety for compliance with 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by D'Andrade.

The D'Andrade reference discloses a bubble producing apparatus comprising an "automated bubble producing device" 51 and a "liquid emitting device" 31 including a plurality of "exit ports" or apertures, wherein as much as Applicant has defined by a "liquid emitting device" the movement of air by the impeller device 51 causing the "emission" of bubbles, which are comprised of liquid, meets Applicant's claimed limitation of a "liquid emitting device".

4. Claims 1-5,8-11,14-17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Henkin et al.

The Henkin et al. reference discloses a submergible hand-held hydro massager that emits a flow of water and bubbles (i.e. see the cavitation shown in Figure 1) comprising a "liquid powered

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or hydraulic motor" 230 and a plurality of "exit ports" 142. All functional and introductory statements of intended use have been carefully considered but are deemed not to impose any structure on the claims distinguishable over the Henkin et al. device which is further capable of being used as a toy if one so desires.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-20 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-17 of allowed copending Application No. 08/608,854. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application

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since the referenced copending application and the instant application are claiming common subject matter.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is (703) 308-0891.



STEVEN O. DOUGLAS
PATENT EXAMINER

SD

June 30, 1998